

REPRESENTATIVE FOR PETITIONER:
Richard J. Deahl, Barnes & Thornburg, LLP

REPRESENTATIVE FOR RESPONDENT:
Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

South Bend Medical Foundation, Inc.)	Petition No.:	20-012-08-2-8-00001	
)			
Petitioner,)	Parcel No.:	PP012-02-01477 (Personal Property)
)			
v.)		
)			
Elkhart County Assessor,)	Assessment Year:	2008
)			
Respondent.)		
)			

Appeal from the Final Determination of
Elkhart County Property Tax Assessment Board of Appeals

July 26, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's personal property is exempt from taxation pursuant to Indiana Code § 6-1.1-10-18.5 or Indiana Code § 6-1.1-10-16(a).

PROCEDURAL HISTORY

2. South Bend Medical Foundation, Inc., filed a Form 136 Application for Property Tax Exemption with the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) on May 12, 2008. The Elkhart County PTABOA issued its determination denying the exemption on February 3, 2009. On March 19, 2009, Mr. Richard J. Deahl, Barnes & Thornburg, LLP, on behalf of the Petitioner, filed a Form 132 Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on January 26, 2010, in Goshen, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:¹

Dr. Robert J. Tomec, President, South Bend Medical Foundation, Inc.

¹ Ms. Shannon L. Zelt, Court Reporter for Court Report Services, was present at the hearing to transcribe the proceedings. Judge McMillen noted for the record that pursuant to 50 IAC 17-6-2 (c), an official copy of the transcript must be submitted to the Board at no expense to the Board.

Ann M. Sullivan, Chief Financial Officer, South Bend Medical Foundation, Inc.
Robert J. King, Vice President/Secretary, South Bend Medical Foundation, Inc.
Gregory S. Losasso, Vice President of Operations, Elkhart General Hospital

For the Respondent:

Cathy Searcy, Elkhart County Assessor

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Application for Property Tax Exemption – Form 136, dated May 12, 2008, South Bend Medical Foundation’s 2005 through 2007 balance sheets and statements of operations and changes in unrestricted net assets,
- Petitioner Exhibit 2 – Notice of Action on Exemption Application – Form 120, dated February 3, 2009,
- Petitioner Exhibit 3 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, dated March 23, 2009,
- Petitioner Exhibit 4 – South Bend Medical Foundation’s Memorandum in Support of Exemption,
- Petitioner Exhibit 5 – A copy of Indiana Code § 6-1.1-10-16 and § 6-1.1-10-18.5 and Citations to Relevant Indiana Tax Court Authority,
- Petitioner Exhibit 6 – South Bend Medical Foundation’s Certificate of Incorporation and Articles of Incorporation, dated August 8, 1946,
- Petitioner Exhibit 7 – South Bend Medical Foundation’s By-Laws,
- Petitioner Exhibit 8 – Letters from the U.S. Treasury Department – Internal Revenue Service, dated September 12, 1949, March 4, 1971, April 3, 1978, and December 17, 1991, respectively, and a Certificate of Existence issued by the Indiana Secretary of State, dated January 25, 2010,
- Petitioner Exhibit 9 – Excerpt from South Bend Medical Foundation’s Articles of Incorporation,
- Petitioner Exhibit 10 – South Bend Medical Foundation’s Schedule of Property in Elkhart County for March 1, 2008,²
- Petitioner Exhibit 11 – A copy of the Indiana State Department of Health license issued to Elkhart General Hospital, dated January 1, 2008,

² Petitioner Exhibit 10 contains confidential information protected from disclosure pursuant to Ind. Code § 6-1.1-35-9.

- Petitioner Exhibit 12 – South Bend Medical Foundation’s Laboratory Manual, dated January 2009,
- Petitioner Exhibit 13 – South Bend Medical Foundation’s educational services provided in 2008,
- Petitioner Exhibit 14 – Affiliation Agreements between Andrews University, Ivy Tech Community College of Indiana and South Bend Medical Foundation,
- Petitioner Exhibit 15 – Documentation from Elkhart General Healthcare System regarding the Hospital Medical Education Program, dated May 15, 2008,
- Petitioner Exhibit 16 – Notices regarding the SCACA 2008 Teleconference Series, the 2008 CAP Teleconference Series and the American Society for Clinical Pathology Spring 2008 Teleconferences and Technical Notices on Multiple Myeloma Panel by FISH, ANA Screening with Diagnostic Panels, ZAP-70 by Flow Cytometry, and Reticulocyte Hemoglobin Equivalent,
- Petitioner Exhibit 17 – South Bend Medical Foundation’s health pamphlets,
- Petitioner Exhibit 18 – South Bend Medical Foundation’s 2008 Charity and Community Support Activities,
- Petitioner Exhibit 19 – Letters of support from Heart City Health Center, St. Martin’s Healthcare Services, the Women’s Task Force, and River Bend Cancer Services,
- Petitioner Exhibit 20 – South Bend Medical Foundation’s pamphlets regarding blood donation,
- Petitioner Exhibit 21 – A Summary of Testimony.

6. The Respondent did not submit any exhibits.

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petition with attachments,
- Board Exhibit B – Notice of Hearing on Petition, dated December 16, 2009,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheet.

8. The personal property subject to this appeal is equipment used in the laboratory at Elkhart General Hospital located at 600 East Boulevard, Elkhart, in Concord Township, Elkhart County.

9. The ALJ did not conduct an on-site inspection of the property.
10. For 2008, the PTABOA determined the personal property to be 100% taxable.
11. The Petitioner contends the property should be 100% tax-exempt.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
19. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State*

Board of Tax Commissioners, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PETITIONER’S CONTENTIONS

20. The Petitioner’s counsel contends that the Petitioner’s personal property should be exempt under Indiana Code § 6-1.1-10-18.5, because the property is substantially related to, and supportive of, the inpatient facilities at Elkhart General Hospital. *Deahl argument*. Further, Mr. Deahl argues, the property is exempt under Indiana Code § 6-1.1-10-16 because the property is predominantly used for scientific, educational and charitable purposes. *Id.*

21. South Bend Medical Foundation was formed in 1946. *Petitioner Exhibit 6*. It is an Indiana Non-Profit Domestic Corporation that is exempt under 501(c)(3) of the Internal Revenue Code. *Deahl argument; Petitioner Exhibits 6 and 8*. According to its Articles of Incorporation, the foundation’s mission is:
 - (a) “The establishment, maintenance and operation of medical and scientific libraries and laboratories and the employment and use therein of competent librarians, scientists, chemists, bacteriologists, pathologists and other experts and technicians;
 - (b) Cooperation with public health authorities and medical and scientific organizations and the furnishing and providing of laboratory services of all kinds to public health authorities, hospitals, licensed physicians and surgeons and other organizations and persons requiring such services;
 - (c) The accumulation of information; the conduct of scientific investigations and research and the development and improvement of methods for the prevention, alleviation and cure of injury and disease; and

(d) The receipt, the administration and the expenditure of funds and the distribution and disbursement of income and capital, directly or indirectly and without regard to sex, race, creed or nationality, for (1) the promotion of and the assistance to other charitable, scientific and educational institutions; (2) the promotion of human health and welfare; (3) the alleviation of human suffering; and (4) the relief of the needy”.

Id. The Petitioner’s witness testified that all of the funds earned by the foundation are reinvested in its scientific, educational and charitable activities. *Tomec testimony.*

22. The property at issue in this appeal is laboratory equipment located within Elkhart General Hospital that is owned and operated by South Bend Medical Foundation. *Deahl argument.* Elkhart General Hospital’s Vice President of Operations, Mr. Gregory Losasso, testified that the hospital is an Indiana non-profit corporation that is exempt under 501(c)(3) of the Internal Revenue Code. *Losasso testimony.* Further, it is licensed by the Indiana State Department of Health under the provisions of Indiana Code § 16-21. *Losasso testimony; Petitioner Exhibit 11.*
23. Mr. Losasso testified that Elkhart General Hospital is a 340 bed acute care facility, which offers emergency room services, open-heart surgery, obstetrical services, neurological services, general medical surgery, behavioral sciences and psychiatric services. *Losasso testimony.* According to Mr. Losasso, the hospital has a contract with South Bend Medical Foundation to provide laboratory services that are necessary and critical to the provision of care to the inpatient portion of the hospital. *Id.* The foundation provides the hospital with pathologists that provide quality care and services at an affordable cost to the patients and the hospital. *Id.*
24. South Bend Medical Foundation’s Chief Executive Officer, Dr. Robert Tomec, testified that the equipment used at the hospital includes incubators, centrifuges, refrigerators, freezers, testing instruments, computers, monitors and printers. *Tomec testimony; Petitioner Exhibit 10.* Some of the tests performed by the foundation for the hospital

include blood counts, basic chemistry, electrolyte testing and urinalysis testing. *Tomec testimony; Petitioner Exhibit 12.* According to Dr. Tomec, because the Foundation provides all of the equipment, fifty- four employees and testing to the hospital, it enables the hospital to provide quicker and more efficient laboratory services to its patients and physicians. *Tomec testimony.*

25. Dr. Tomec testified that South Bend Medical Foundation's main laboratory is located in South Bend, Indiana. *Tomec testimony.* At the South Bend laboratory, pathologists perform extensive and more sophisticated testing for all of the regional hospitals including Elkhart General Hospital. *Id.* By centralizing the more sophisticated tests, it allows pathologists time to provide higher quality test results in a more efficient and effective manner. *Id.; Petitioner Exhibit 12.* According to Dr. Tomec, the foundation's pathologists also perform surgical pathology, read biopsy and pathology specimens, perform autopsies, provide educational services, serve as medical directors and operate the Central Blood Bank. *Tomec testimony; Petitioner Exhibits 12 through 20.*
26. The Petitioner argues that its personal property is also used for scientific purposes. *Deahl argument.* Dr. Tomec testified that South Bend Medical Foundation is devoted to clinical and anatomic pathology, which is defined as the study of disease. *Tomec testimony.* The foundation's research scientists have developed testing for the diagnosis of disease and the treatment and classification of malignancies. *Tomec testimony; Petitioner Exhibit 12.* For example, it performed H1N1 testing and developed the ability to detect and confirm anthrax. *Tomec testimony.*
27. Further, the Petitioner argues, its property is used for educational purposes. *Deahl argument.* According to Dr. Tomec, South Bend Medical Foundation maintains a medical library with numerous scientific journals that provides technical notices and conducts educational conferences and consultations for patients, physicians and the community. *Tomec testimony; Petitioners Exhibits 12, 13 and 16.* The foundation's doctors also teach courses at a number of schools, such as Elkhart Public Schools, Ivy Tech Community College, Ferris State University, Andrews University and Indiana

University-Purdue University at Indianapolis. *Tomec testimony; Petitioner Exhibits 13 and 14.*³ In addition to teaching, students obtain clinical experience in the Petitioner's laboratories. *Id.* For example, Dr. Tomec testified, South Bend Medical Foundation participates in the Hospital Medical Education Program sponsored by Elkhart General Hospital, whereby students observe clinical activities conducted by the foundation. *Tomec testimony; Petitioner Exhibit 15.* Moreover, the foundation educates the community through the distribution of informational pamphlets. *Tomec testimony; Petitioner Exhibit 17.*

28. Finally, the Petitioner argues, its property is used for charitable purposes. *Deahl argument.* Dr. Tomec testified that South Bend Medical Foundation contributes money and participates in a variety of charitable clinics and testing programs in Elkhart and the surrounding counties. *Tomec Testimony; Petitioner Exhibit 18.* For example, the Petitioner provides free or reduced cost testing to patients at the Heart City Health Center and for the Women's Task Force. *Id.; Petitioner Exhibit 19.* The foundation also provides lead testing to children under the age of two to prevent permanent neurological problems. *Tomec testimony; Petitioner Exhibit 18.*
29. In addition, Dr. Tomec testified that the Petitioner was the first clinical laboratory to develop a not-for-profit blood bank. *Tomec testimony.* According to Dr. Tomec, the blood bank provides packed red blood cells, platelets and plasma to several regional hospitals. *Tomec testimony; Petitioner Exhibit 20.* The foundation also provides donor support, undertakes educational and recruiting activities, and provides small incentives to donors in order to insure enough blood is available in a community to support its needs. *Id.*

³ Dr. Tomec testified he serves as the Medical Director for the Medical Laboratory Technology Program at Ivy Tech Community College. *Tomec testimony.*

RESPONDENT'S CONTENTIONS

30. The Respondent contends that the petition for exemption under Indiana Code § 6-1.1-10-16 was denied because, although South Bend Medical Foundation is a worthy organization, its operation is not charitable. *Searcy testimony*. According to the County Assessor, in 2008 the PTABOA conducted an intense review of all not-for-profit applications in Elkhart County. *Id.* Ms. Searcy testified that the PTABOA recognized that the foundation was operating in Elkhart General Hospital. *Id.* However upon review of the Petitioner's application for exemption, the PTABOA determined it lacked sufficient evidence to grant an exemption on the personal property. *Id.*
31. The Respondent further argues that the burden of proof is on the Petitioner to present substantial and reliable evidence to support its claim for exemption. *Searcy testimony*. The Respondent contends that, while the Internal Revenue Service recognizes the Foundation as a 501(c)(3) organization exempt from income taxes, that does not establish that the organization qualifies for a property tax exemption. *Id.*

ANALYSIS OF THE ISSUE

32. The Foundation contends that its personal property should be exempt from taxation under Indiana Codes § 6-1.1-10-16 and § 6-1.1-10-18.5. *Deahl argument*. Thus, the Foundation bears the burden of proving by a preponderance of the evidence that the personal property is owned, occupied, and predominately used for one of the exempt purposes in those statutes. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004).
33. Indiana Code § 6-1.1-10-18.5(b) states that "Tangible property is exempt from property taxation if it is: (1) owned by an Indiana nonprofit corporation; and (2) used by that corporation in the operation of a hospital licensed under IC 16-21..." Ind. Code § 6-1.1-10-18.5(b).

34. Here, the Petitioner's representative testified that the personal property in question is wholly owned by South Bend Medical Foundation. *Tomec testimony*. The Petitioner provided an itemized list of all of the personal property in question. *Id.*; *Petitioner's Exhibit 9*. South Bend Medical Foundation further provided certification of its non-profit status issued by the Indiana Secretary of State and the Internal Revenue Service, as well as exhibits including the foundation's articles of incorporation and its code of bylaws. *Tomec testimony*; *Petitioner Exhibits 6 through 8*. Thus, the Petitioner has met the first provision of the test provided under Indiana Code § 6-1.1-10-18.5(b).
35. The Petitioner also argued that its property was used by its employees in the operation of Elkhart General Hospital. *Deahl argument*. The Petitioner's witness testified that Elkhart General Hospital is licensed under Indiana Code § 16-21. *Losasso testimony*; *Petitioner's Exhibit 11*. Further, Mr. Losasso testified that the successful operation of many parts of the hospital, including the emergency room, relies heavily on testing completed using the property at issue in this appeal. *Losasso testimony*. According to Mr. Losasso, the equipment performs an integral function within the hospital. *Losasso testimony*. Dr. Tomec explained that testing completed using the Petitioner's property is critical to the operation of the hospital because "over 70% of medical decisions are made on the basis of clinical testing." *Tomec Testimony*. Thus, the Petitioner has met the second provision of the test provided under Indiana Code § 6-1.1-10-18.5(b).
36. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to offer any evidence to rebut or impeach the Petitioner's prima facie case that the personal property in question was owned by an Indiana nonprofit corporation, and that it was used by that corporation in the operation of a hospital licensed under Indiana Code § 16-21. Ms. Searcy merely argued that the Petitioner failed to provide sufficient information in support of its request for exemption on its exemption application. This falls far short of the Respondent's burden to rebut the Petitioner's case. *See Meridian Towers*, 805 N.E.2d at 479.

SUMMARY OF FINAL DETERMINATION

38. The Board finds the Petitioner raised a prima facie case that its personal property qualifies for 100% tax exemption. The Respondent failed to rebut the Petitioner's case. The Board finds in favor of the Petitioner and holds that the personal property at issue in this appeal is 100% exempt.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.

The Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the

Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.